



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

2. — *The Ancient City: a Study on the Religion, Laws, and Institutions of Greece and Rome.* By FUSTEL DE COULANGES. Translated from the latest French edition by WILLARD SMALL. Boston: Lee and Shepard. 1874.

THE *Cité Antique* of M. de Coulanges has been so often referred to in the pages of this Review, that it seems now superfluous to enter into any elaborate discussion of its contents or its merits. Readers who are interested in prehistoric studies, who read Maine's "Ancient Law" and "Village Communities," and are on the watch for his forthcoming lectures, who are acquainted with Lubbock's "Origin of Civilization," M'Lennan's "Primitive Marriage," Tyler's "Early History of Mankind," Morgan's "Systems of Consanguinity," Müller's *Geschichte der Americanischen Urreligionen*, Bachofen's *Mutterrecht*, and similar works, must be assumed to have sufficient acquaintance already with the *Cité Antique*. If not, they should buy the book at once. It is indispensable for the study of the class of institutions with which it deals. Theology, law, and history are all touched so closely by this work, that no student in either branch can afford to neglect reading it.

M. de Coulanges has undertaken to show how the institutions of archaic Rome grew from, and were in every fibre permeated with, one great religious idea, the active force of this idea consisting in an intense realization of a life continued after death. His fundamental proposition is a simple one, and, so far as appears, indisputable. Religion in the condition here studied was, he says, purely domestic. The mystery of generation was to the ancient Roman what the mystery of creation is to our own age. The belief that generation was due entirely to males, that the female was only passive, receptive, and had no other share in it, caused the father to be alone regarded as the possessor of the mysterious spark of existence, and gave to him the peculiar sacredness which characterized the Roman *paterfamilias*. Hence came the extraordinary legal rights classified under the head of *patria potestas*. Each family, moreover, was an independent religious community, with a ritual of its own. The father was the priest. No member of another family could join in these ceremonies. Hence it resulted that the married daughter must pass into her husband's family; and cognatic relationship did not constitute membership in the Roman family. The mystery of generation incarnated in the *paterfamilias*, extending itself back to the deceased progenitor, gave as a necessary result the worship of an-

cestors. The mere fact of death was no interruption to the logic of their reasoning. The ancestor was in his tomb, hard by the house. His spirit lived there, a part of the family, invoked at every moment, interested in the welfare of the living, his hunger supplied by regular offerings, his power and his immediate presence unquestioned and undoubted. The domestic hearth was the altar; the fire upon it was perhaps regarded as the divine spirit of the ancestors. Their effigies stood about it, or about the atrium. Neglect of the worship, or failure to make the regular offerings, was therefore a crime like parricide. To allow the family to become extinct, so that no one should be left to carry on the worship and supply the offerings, was a compound of parricide and suicide. Naturally, therefore, the Roman fought *pro aris et focis*, and in defence of his Lares and Penates. Naturally, too, Roman law was intensely imbued with the logical consequences of this religious theory.

No doubt M. de Coulanges has grasped here an idea full of promise; and the manner in which he has developed it deserves the praise it has received. Nor is it a question of much importance whether he has or has not ridden his theory too hard. The object of a monograph like this is to throw its subject into strong relief, and to stimulate inquiry. But several years have passed since the book appeared; and now that its merits and its defects are tolerably well understood, it is natural that the student should begin to ask what further use can be made of the historical principle developed in it. The inquiry is interesting in various ways, but it has a peculiar interest in a legal point of view. The early history of law has never been written; indeed, it is safe to say that hardly an attempt has yet been made to collect, far less to study on any scientific system, the materials for such a history. The darkness which rests over the subject is as yet impenetrably dense. Roman institutions have alone been studied with care, but they have necessarily been studied by themselves rather than as a part of a general subject. Hence Roman law has come to be regarded as the type and source of all law; and the history of Roman law appears to bound the ambition of the most curious student. When Sir Henry Maine raised a corner of the veil which covered, and still covers, comparative jurisprudence, and illuminated certain points of legal history by the light of Hindoo law, his lectures startled the public; yet even Sir Henry Maine is true, after a fashion, to the classical tradition. Roman law is to him, too, the pure, typical, legal history, to be illustrated rather than to be used for illustration, to be studied as the end rather than to be used as a subject for classification. It is true that he has, since the pub-

lication of his Ancient Law, shown a marked disposition to widen the range of his generalizations and studies. It is also true that however closely the professional lawyer may cling to his superstitious belief in the completeness of the law as he knows it, the public at large has become extremely curious and eager to follow a wider course of study, and is certain to find the means of gratifying this taste.

The Roman law is unquestionably the best, and almost the only satisfactory subject for scientific study to the student of legal history. Its advantages are obvious and undisputed, nor is it intended to dispute them here. Acquaintance with its history is no doubt a condition precedent to any scientific acquaintance with modern systems of law; but all this does not necessarily imply that Roman law is a final study. The more strongly all this is insisted upon, the more likely will the student be to assume what is not true, — that law is a sterile science, and offers but little variety in its forms of development. It is not even necessarily true that the archaic law of Rome was the truest type of archaic law; yet this is a matter of some importance as an element in legal history, and is worth an investigation. If deeper examination were to prove that Roman law as known to us in its archaic form was not pure archaic law, curious consequences might follow.

M. de Coulanges has described in a very lively manner the salient points of early Roman law, and has traced them back to their origin in the religious or superstitious ideas of the Roman citizen, as developed first of all in the Roman family. The evolution of law and society is to be studied, therefore, as proceeding from the Roman family and its family law. The Roman family, with all its extreme religious characteristics, its extravagant paternal authority, and its exclusion of cognatic relationship, is to be considered as the type of the family. It is to be assumed as the true Aryan type. All Aryan races sprang from an original Aryan society, in which the Roman family was the typical family. This is the usual assumption, and necessarily so; because unless this is assumed the value of Roman jurisprudence in breaking the fetters of the family organization will be less clear.

But as a matter of fact it is not altogether certain that the Roman family was the typical archaic family; and it is even quite conceivable that the extreme legal consequences which the Romans developed from their family system were nothing more than peculiarities of their own rigid logic and their local conditions. There are certain characteristics of the Roman family and its forms of worship which strongly suggest other than Aryan influences. They inspire an eager

curiosity to know what was the organization of the Etruscan family, and its religious and philosophical mysteries. Etruscan law and society are still comparatively difficult to study; but there is one race of which something is really known, whose institutions seem to offer a clew of a certain sort, or at least indicate a possible clew. The influence of Egypt on the races which surrounded the Mediterranean in prehistoric times, the Etruscans among the rest, is far too much disputed to answer for the basis of any solid argument; but the institutions of Egypt are at least better known than those of any other contemporary race. They were not Aryan; and they existed in their perfection as many centuries before the rise of M. de Coulanges's *Ancient City* as the *Ancient City* existed before the time of modern New York. Egyptian law has been little studied, and is little known; but, happily, Egyptian religion is well preserved, and its very earliest form is peculiarly interesting, as furnishing a point of comparison with that of archaic Rome. Compare Mariette Bey, the first Egyptian authority of the time, with M. de Coulanges:—

“Every complete funeral monument is divided in three parts: the exterior chapel; the pit, or shaft sunk vertically into the rock to a depth that varies between thirty and one hundred feet; and the mortuary chamber where the mummy reposes, at the foot of the shaft.

“The exterior chapel is composed of one or several chambers. Here at certain periods of the year came the relations, or perhaps the priests of a certain class, to perform the funeral rites in honor of the dead. The entrance frequently has for door-posts bas-reliefs representing the standing image of the deceased, and for lintel a wide slab covered with an inscription in horizontal lines. This inscription always deserves to be read. It begins with an invariable formula of prayer, followed by a mention of the funeral gifts to be presented to the deceased at certain anniversaries throughout eternity. The list of these anniversaries is not at this earlier period so complete as it afterwards becomes. By the side of some feasts not well defined, there occur others which have a distinctly astronomical character. I will instance the twelve feasts of the first day of each month; the twelve feasts of the sixteenth day of each month; the feasts of the commencement of the seasons; and especially the two feasts to be celebrated at the first day of the sacred year and at the first day of the civil year, precious evidence that Egypt even then had established the true length of the year of three hundred and sixty-five and a quarter days. The representations that cover the walls of the interior have no less interest. Here the personality of the deceased is always prominent. One sees him surrounded by his family, assisting at different scenes; he hunts among the reeds; he presides over the field-work; servants bring him the produce of his farms; others immolate oxen at his feet. The furniture of the chambers where these representations of private life are figured is always as simple as possible; it consists only of tables for offerings, and stela. The first are votive. The offerings in sacred bread,

wines, fruits, provisions, which must be brought in kind on the anniversaries mentioned above, appear here sculptured on the stone. The statues representing the deceased are, however, for the most part not in the open hall. At a little distance from the principal chamber the architects have concealed in the wall a sort of closet, walled in on all sides. In this corridor the statues were shut up. The usual custom was to hide these monuments for eternity, but sometimes a little rectangular opening in one of the walls of the principal chamber betrays a narrow duct leading to the hidden statues, used either to convey words which the statues were supposed to hear, or to serve as a passage for the smoke of incense. It is not impossible that the rectangular slits in the king's chamber of the pyramid of Cheops had this destination. The complete absence of figures of gods among the innumerable scenes represented on the walls of these early chapels is an anomaly peculiarly characteristic of the epoch."

All this reads like an extract from Coulanges, except that it describes a far more magnificent civilization. The pyramids themselves would appear to have been only the grandest emanation from this principle of ancestral worship. The pyramid was the rock within which the shaft was sunk and the mortuary chamber hidden. On the east side of the pyramid was the temple or chapel where at the fixed feasts offerings were brought. Mere vanity was not the motive which caused these prodigious monuments to be built. They are rather the emanations of the most intense faith that ever existed. They were the fortresses within which the monarch expected to dwell for eternity, protected by the magnitude of his own work, fed by regular offerings, and listening as when alive to the prayers or thanks of his subjects. But imposing as the pyramids are, they are not the most affecting evidence of this Egyptian creed. Among all the characteristic spectacles of that extraordinary land, the long line of tombs which dot and honeycomb the cliffs for hundreds of miles along the Nile is the most impressive, because of its incessant recurrence to rivet the same idea upon the mind. Of all races the early Egyptians must have been pre-eminently worshippers of the dead. "The Egyptians," says Mariette, "had no other domestic worship than that of their ancestors. They preserved about them, in their houses, the statues of their relations, which played the part of the Penates among the Romans."

All this is not advanced with the object of proving that the Romans obtained their family system from Egypt, but merely to show what kind of family system prevailed at least on one shore of the Mediterranean thousands of years before the Roman city existed, or at least is supposed to have found a name. The Egyptian worship thus described implies a complete system of law. We do not yet

know whether the family law of the pyramid-builders was analogous to that of republican Rome, but Diodorus Siculus supplies one link in the chain when he says that, according to common belief among the Egyptians, the father was sole author of his child's existence, the mother furnishing to it only nourishment and abode. The mystery of generation is the subject of the paintings in the third corridor of the tomb of Rameses VII. at Thebes, about contemporaneous with the siege of Troy.

Undoubtedly there is nothing in all this at all inconsistent with the idea that the same religious conception may at one period in the world's history have prevailed over a large part of Asia, Europe, and North Africa, embracing the Semitic and Aryan races in one legal and philosophical system. But the question is not so much whether one general system prevailed, as it is whether one particular race or tribe shall be considered as the type of that system, if it existed. The Egyptian philosophy was highly developed five thousand years ago. Either it was the same philosophy as that of the Aryans, in which case all Aryan races ought to have held it, or it was a development of its own, in which case the question rises, why the Romans so nearly approached it, and what then the typical Aryan system was.

This question is especially forced on the attention in studying the *Cité Antique*, which thrusts into extreme prominence precisely that religious and metaphysical side of Roman institutions which finds so strong analogies in Egypt. And it is a question peculiarly interesting to the race that claims a German descent, because the archaic German appears to have known little or nothing of the Roman refinements in law and philosophy. The Germans may perhaps have worshipped their ancestors, but they built upon this worship no such structure as the Romans did. The archaic German family, which must have shown traces of such an organization had it ever existed, was, on the contrary, a loose, flexible, almost indefinite association. The *paterfamilias* had no such absolute power as his Roman contemporary; his sons were subjected to no life-long despotism, and were at liberty to own all the property they could acquire; the wife had in her right of divorce an easy means of protecting herself from her husband's authority; she had ample and even excessive rights of dower and inheritance; the daughter was not excluded from her own family by marrying into another; her children looked upon their mother's sisters and brothers as equally near with their father's nearest relations; kinship was reckoned back equally through father and mother, and the blood-feud was shared by both sides of the family alike; the German did not fight *pro aris et focis*; he had no Lares or

Penates ; he was not shocked at the idea of committing his dead king or lord to a ship and sending it out to meet its destiny on the wide ocean ; he does not appear to have offered incense or food at his ancestors' tomb ; he did not regard the cobolds and goblins of his house as beings of peculiar sanctity, though they would seem to have been all that was left of the spirits of his ancestors ; in short, hardly a trace is to be found in the German family of that elaborate religious and legal formalism which is so prominent in the Roman.

The usual and obvious explanation of these differences is offered by the easy assumption that the Germans, like the Romans, had possessed all the religious and legal characteristics of the extreme family system before they began their wanderings, and had subsequently lost them ; therefore Roman society is the typical Aryan society. But another explanation is conceivable, and even probable. If it be true, as need not be denied, that the Germans during their wanderings lost much that was characteristic in their Aryan religion and law, it may still be equally true that the Romans, in contact with other races and a more developed religious creed in Italy, may have wrought out with their logical directness a social and religious system which in severity of legal sequence went far beyond their own original customs, — were perhaps, in one sense, depravations of those customs, especially in the inordinate elevation of paternal authority, and the corresponding degradation of the mother and children.

What, then, was in fact the original Aryan family system ? This is a question which can only be answered by a comparison of widely separated forms of society and law, the materials for which have not yet been collected ; but that the Aryan law was in some respects much nearer German than Roman law is indicated by a curious fact lately brought to light by Sir Henry Maine. In his lecture on the Early History of the Property of Married Women, Sir Henry has advanced an ingenious theory in regard to the origin of the practice of Suttee, or widow-burning. It appears that the oldest monuments of Hindoo law and religion gave no countenance to the rite. "These inquiries pushed much further have shown that the Hindoo laws, religious and civil, have for centuries been undergoing transmutation, development, and in some points depravation at the hands of successive Brahminical expositors, and that no rules have been so uniformly changed — as we should say, for the worse — as those which affect the legal position of women. It is extremely likely that what the Romans would call the *dos* was at one time a much more important institution among the Hindoos than it is now, and, indeed, that the married woman's authority over it was a great deal more extensive

than was that of a Roman wife. . . . There is much reason to believe that the text, which one of the most authoritative of the Hindoo legal treatises attributes to the mythical, semi-divine legislator Manu, describes a condition of the law very like that which in very ancient times prevailed in India. 'Stridhan,' says the rule, or woman's property, includes 'all the property which a woman may have acquired by inheritance, purchase, partition, seizure, or finding'; and this is a comprehensive description of all the forms of property as defined by the modes of acquisition. Nothing, however, in the existing Hindoo law gives this amplitude, or anything like it, to the Stridhan."

In this respect, however, the ancient Hindoo law agrees very well with the ancient German law, which was also very liberal to wives and widows, as well as to daughters. The assumption is inevitable that this was Aryan law. The Romans modified it by the religious autocracy which they conferred upon the *paterfamilias*. The Hindoos, as Sir Henry affirms, unable to change the law, restricted it wherever restriction was possible, and in order to escape its effects adopted the ingenious expedient of working upon the religious credulity of the widow, and so making a law of Suttee. In both cases the same influences and the same tendency are evident.

But if this is an example of the character of pure Aryan law, that law would appear to have had a far more liberal character than the early Roman. Such power in the hands of the wife is incompatible with the Roman conception of *patria potestas*. It implies a family tie much more closely resembling the German. In other words, it points to the inevitable conclusion that the Roman family and the law derived from it were not universal to the archaic society; that they were peculiar to Rome; that they were in their peculiarities essentially perversions of the Indo-European customs, and that these perversions mark the whole history of Roman jurisprudence. It points also to the necessity of creating something that can claim the name of scientific legal history; and perhaps to the student of English law it points especially to the conclusion that no really thorough historical acquaintance with his subject is possible without tracing the stream of legal institutions back through the German hundred, as well as through the Roman city, to its Aryan source.